

REMARKS

Applicant acknowledges receipt of an Office Action dated August 4, 2004. Claims 1 and 3-18 are presently pending in the application. Claims 12-14 have been withdrawn as being drawn to non-elected subject matter. Applicant requests rejoinder of method claims 12-14 in accordance with the provisions of MPEP §821.04 upon a finding of allowable product claim(s).

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

Rejections Under 35 U.S.C. § 103

On page 2 of the Office Action, the PTO has rejected claims 1, 3-11 and 15-16 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,486,507 to Schumacher (hereafter "Schumacher") in view of U.S. Patent 5,612,104 to Grund (hereafter "Grund") as evidenced by Polymer Science Dictionary, 2nd edition by Alger (hereafter "Alger"). Applicant respectfully traverses this rejection for the reasons set forth below.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, a prior art reference (or references) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Here, Schumacher fails to disclose a "tubular, seamless. . . sausage casing" as recited in independent claims 1 and 15, and no proper combination of Schumacher and Grund resolves this deficiency.

First, Schumacher fails to disclose sausage casings comprising the compositions set forth in either claim 1 or claim 15. While Schumacher does disclose polyamide films, Schumacher's films are used as food packaging and not as sausage casings. For example, at column 4, lines 45-49, Schumacher states:

This has the further advantage that. . . the appearance of the *package* and the durability of the shrink-wrapped goods are improved.

Also, at column 4, lines 55-66, Schumacher states:

Nevertheless, the good properties of polyamides and copolyamides, which are well known, are largely retained, as for example the property of toughness elasticity or flexibility, which is so important for the strength of the *package*, and the properties of the gas tightness and vacuum moldability on conventional *packaging* machine, which are equally important for *packaging* of foods. In addition, the film is characterized by an improved transparency and a high surface gloss, which in turn promote considerably the overall optical impression of the *package* produced from the film.

At column 7, lines 19-21, Schumacher states:

A relatively high shrinkage force is important since, when *packaging* relatively heavy materials, the force of gravity of the material to be wrapped must be overcome."

In addition, at column 7, lines 40-42, Schumacher states:

Both plastics complement each other therefore in an outstanding manner, especially as *packaging* film for foods.

And, continuing with the discussion of the films as packaging films, at column 8, lines 55-65, Schumacher states:

Of course, after a thermoformed *package*, so produced by thermoforming, is filled with the material to be *packed*, it still requires a covering film, which closes off the upper side of the *container* tightly. These lid or closing films are generally of a lesser layer thickness than the lower film, which are used for vacuum thermoforming, since there is no shaping whatsoever, with the thinning out layers. For this purpose, composite films of at least two layers are preferably taken, in which case the side facing the vacuum-shaped container consists of a polyolefin, which can be heat sealed to the inner layer of the container.

In light of these passages, Applicant submits that it is clear that Schumacher's disclosure relates to food *packaging* films and not to sausage casings.

Second, in the Office Action, the PTO suggests that Schumacher discloses tubular sausage casings at col. 14, lines 60-70. For reference, Applicant reproduces the cited passage below:

EXAMPLE 7 describes the preparation of another coextruded composite film, which is stretched by thermoforming. By means of the 3-layer tubular film coextrusion, as described in Example 6, a film is prepared consisting of

I. polyamide with a layer thickness of 35 μm

II. ionomeric resi like that used in Example 6 as an adhesion mediator, with a layer thickness of 15 μm and...

The PTO, however, appears to have overlooked the remaining text in Example 7 which states that:

The film, so prepared, is cut as a single *sheet* to a width of 420 mm and is processed on a vacuum forming machine, like that in Example 4, with the same parameters and cycle time of 4 and 8 per minute.

Applicant notes that Example 6 states that “the film, produced at a blow-up ratio of $B = 1.8:1$, was *cut* into *individual sheets* and wound up.” Thus, the end product of both Example 6 and Example 7 is a *cut sheet* and not a *tubular* sausage casing.

Finally, in the Office Action, the PTO suggests that Schumacher discloses seamless sausage casings at col. 13, lines 15-20. Applicant respectfully disagrees, and for reference, produces the cited passage of Schumacher below:

The mold was constructed as a double, the dimensions of each individual mold being 225 mm (length parallel to the running direction) X 40 mm (depth). The cycle time was 5 per minute. Finely minced pork sausages were the filling material. The sausage skins were about 200 mm long and about 30 mm in diameter. Number: 5 sausages, parallel to each other in the longitudinal direction.

Here, although there is reference to sausage “skins”, these sausage skins are separate and distinct from Schumacher’s film which forms a package which holds a plurality of the already formed sausages. Schumacher provides no discussion whatsoever with respect to the form or composition of the sausage “skins” mentioned in the passage quoted above. Accordingly, Applicant submits that there is no disclosure of *seamless* sausage casings.

From the context of the rejection and the PTO's citation of the various components of Schumacher's film, it is clear that the PTO is suggesting that the film of Schumacher constitutes a sausage casing. Example 6, however, does not disclose Schumacher's film as a sausage casing but rather as a packaging material for packaging a plurality of already formed sausages. The continuing discussion at column 13, lines 22-45 makes it clear that 2 pieces of Schumacher's film are heat sealed together such that *it cannot be said that Schumacher's end product even forms a seamless package*.

In view of the foregoing, Applicant submits that Schumacher fails to disclose the presently claimed tubular, seamless sausage casings, and, inasmuch as Schumacher relates to food packaging films rather than sausage casings, Applicant submits that Grund adds nothing to resolve Schumacher's basic deficiencies. Accordingly, neither Schumacher nor Grund taken either individually or in combination, teach or suggest the presently claimed tubular, seamless sausage casings.

If an independent claim is nonobvious under §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicant submits that claims 3-11 which ultimately depend from claim 1 and claim 16 which ultimately depends from claim 15, are also non-obvious.

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection under §103.

Claims 17 and 18

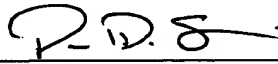
Applicant acknowledges, with appreciation, the PTO's indication that claims 17 and 18 would be allowable if redrafted in independent form.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.